IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 841 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

GUJARAT STATE TRANSPORT CORPORATION - Appellant(s)
Versus
KALPANABEN KIRITKUMAR PATEL - Defendant(s)

==========

Appearance :
MR MD PANDYA for Appellant(s) : 1,
MR BHUSHAN B OZA for Defendant(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 02/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal(Main) passed in M.A.C.P. No.408 of 1981 dated 20.09.1983.

2.0 The brief facts of the case are that on 29th March, 1981, when the present opponent was proceeding on a scooter as a pillion rider driven by her husband along with her minor son, the said

scooter met with an accident with a bus owned by the present appellant. On account of the said accident, the opponent received serious bodily injuries. Therefore, she filed a petition claiming an amount of Rs.75,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Heard learned Counsel for the parties. The case of the opponent before the Tribunal was that when she along with her son were proceeding on the scooter driven by her husband, a bus was coming from the opposite side and when the said bus tried to over-take a camel cart coming from the same direction it dashed the scooter. The said fact is supported by Exh.49 and Exh.50 cross-examination of the opponent and her husband. However, the story put forward by the opponent and her husband is controverted by the driver of the bus involved in the accident in question.

According to him, when the husband of the opponent tried to overtake a camel cart running ahead of the scooter, the said scooter dashed on the right-hand side of the bus and the accident in question took place. It may be noted that contrary to his own story, the driver in his evidence (Exh.73) has narrated altogether a different story. According to him, on the day of the accident, he saw a scooterist trying to overtake a camel cart and then the said scooter dashed with a tree and he, thereafter, took them to the 'Panchayat' Dispensary. Hence, in view of the fact that the driver of the appellant himself has given two stories contradictory to each other, the same cannot be accepted, and therefore, the Tribunal has rightly held that the opponent received injuries on account of the accident caused by the bus owned by the appellant.

3.1 However, while coming to the aforesaid conclusion the Tribunal has lost the sight of the fact that as per Section 85 of the Motor Vehicle

Act no driver of a two wheeled vehicle shall carry more than one person in addition to himself on the vehicle and no such person shall be carried otherwise than sitting on a proper securely fixed sit on the vehicle. In the case on hand the opponent-herself has admitted that she was traveling on the scooter driven by her husband along with her minor son. Hence, it appears that since husband of the opponent was driving the scooter along with his wife and son as pillion riders, in contravention of the provisions of the Motor Vehicle Act, he could not control the scooter and the accident took place. Therefore, the Tribunal ought to have held that the husband of the opponent was also responsible for the accident in question to some extent. Here, it is also required to be noted that the husband of the opponent was not joined as a party before the Tribunal. Therefore, the contention of the learned Advocate for the appellant that the husband of the opponent was not joined as a party with a view to avoid determination of the

contributory negligence on his part, requires to be accepted. I am, therefore, of the opinion that taking into consideration the fact that husband of the opponent was also negligent to some extent, the ends of the justice would met by reducing the amount of compensation by Rs.5,000/. The opponent, therefore, shall be entitled for an amount of Rs.(29,450 – 5000)= Rs.24,350/- towards compensation.

4.0 In the result, the appeal is partly allowed. The cross-objections filed by the opponent stand dismissed. The opponent will be entitled for an amount of Rs.24,350/- towards compensation. The remaining amount shall be refunded to the appellant. The judgment and award of the Motor Accident Claims Tribunal(Main) passed in M.A.C.P. No.408 of 1981 dated 20.09.1983 is modified to the aforesaid extent. Rest of the judgment and award is confirmed. No order as to costs.

(K.S. Jhaveri,J.)

Umesh/